

IN THE UNITED STATES DISTRICT COURT FILED
BILLINGS DIV.

FOR THE DISTRICT OF MONTANA 2010 MAY 26 PM 2 41

BILLINGS DIVISION

PATRICK E. DUFFY, CLERK

BY _____

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SAGA PETROLEUM, LLC,

CV-08-110-BLG-RFC-CSO

Plaintiff,

**ORDER ADOPTING
FINDINGS AND
RECOMMENDATIONS OF
UNITED STATES
MAGISTRATE JUDGE**

vs.

ARROWHEAD DRILLING, LLC, and
BILL MAXWELL,

Defendants.

ARROWHEAD OIL & GAS
DRILLING, a Montana Joint Venture
of Arrowhead Drilling, LLC and B&D
Oil & Gas, Inc.,

Counterclaimant & Third-Party
Plaintiff,

vs.

SAGA PETROLEUM, LLC,
SAGA PETROLEUM
CORPORATION, and PUBLIC GAS
PARTNERS, INC.,

Counterclaim Defendant &
Third-Party Defendants,
respectively.

On March 11, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends Defendants' Motion for Partial Summary Judgment [*Doc. 29*] be denied and Defendants' Motion to Strike Affidavit of Peter Mueller [*Doc. 36*] be denied as moot.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the March 11, 2010 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Arrowhead seeks summary judgment on the grounds that Plaintiff, Saga Petroleum, LLC (Saga), cannot set forth a prima facie case for alleged misrepresentations with respect to an oral agreement and breach of contract

concerning the drilling of natural gas wells. Further, Arrowhead requests summary judgment be entered in its favor on Count II of its counterclaim and all third party claims.

A party is entitled to summary judgment as a matter of law if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact.” Fed.R.Civ.P. 56(c); *see Bahn v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.1991). The moving party carries the initial burden of proof and meets this burden by identifying portions of the record on file that demonstrate the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the initial burden is satisfied, the burden shifts to the non-moving party to demonstrate through the production of probative evidence that there remains an issue of fact to be tried. *Id.*

The court must view the evidence in the light most favorable to the non-moving party. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir.2000) (citations omitted). All reasonable doubt as to the existence of a genuine issue of fact should be resolved against the moving party. *MetroPCS, Inc. v. City and Co. of San Fran.*, 400 F.3d 715, 720 (9th Cir.2005) (citation omitted). Where different

ultimate inferences may be drawn, summary judgment is inappropriate. *Sankovich v. Ins. Co. of N. Am.*, 638 F.2d 136, 140 (9th Cir.1981) (citing Fed.R.Civ.P. 56(c)).

However, the non-moving party “must set forth specific facts showing that there is a genuine issue for trial.” Fed.R.Civ.P. 56(e). The “mere existence of a scintilla of evidence in support of the [non-moving party's] position would be insufficient.” *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Where “the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

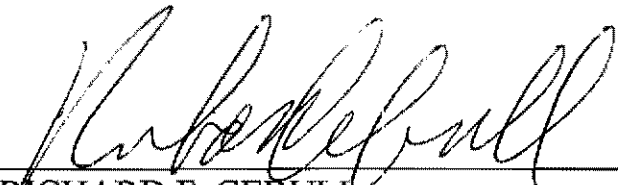
This Court agrees with Judge Ostby’s conclusion that Saga has consistently raised sufficient issues to preclude summary judgment. There are factual issues in this case better left to a jury.

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. Defendants’ Motion for Partial Summary Judgment [Doc. No. 29] is **DENIED**.
2. Defendants’ Motion to Strike Affidavit of Peter Mueller, Plaintiffs’ Exhibits A and B and Deposition Exhibits 62 and 80 [Doc. No. 36] is **DENIED** as moot.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 26th day of May, 2010.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE